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7
8 **BEFORE THE**
PHYSICAL THERAPY BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against: Case No. 1D 1998 62021

12 **DONALD LEE ZIMMERMAN**
13 15630 Mills Drive
Visalia, CA 93292

A C C U S A T I O N

14 License No. PT 5959,

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

20 1. Steven K. Hartzell (AComplainant@) brings this Accusation solely in his
21 official capacity as the Executive Officer of the Physical Therapy Board of California
22 (ABoard@).


23 2. On or about January 28, 1972, the Board issued License Number PT 5959
24 to DONALD LEE ZIMMERMAN (ARespondent@). The License was in full force and effect at
25 all times relevant to the charges brought herein and will expire on September 30, 2001, unless
26 renewed.

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2 JURISDICTION

3 3. This Accusation is brought before the Board, under the authority of the
4 following sections of the Business and Professions Code (ACode@).

5 A. Section 2234 provides, in part, that the Division of Medical
6 Quality shall take action against any licensee who is charged with unprofessional conduct that
7 includes A(a) repeated negligent acts.@

8 B. Section 2609 of the Code provides that the board shall issue,
9 suspend, and revoke licenses and approvals to practice physical therapy as provided in this
10 pter.

11 C. Section 2660 of the Code provides that the Board may, after the
12 conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not
13 more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to
14 terms and conditions any license, certificate, or approval issued under this chapter for any of the
15 following causes:

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17 (h) Gross negligence in his or her practice as a physical
18 therapist.

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20 (i) [V]iolating, or attempting to violate, directly or
21 indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or
22 term of this chapter or of the State Medical Practice Act.

23 (j) The aiding or abetting of any person to violate this
24 chapter or any regulations duly adopted under this chapter.

25 (k) The aiding or abetting of any person to engage in the
26 unlawful practice of physical therapy.

1 D. Section 2620.7 of the Code provides, in part, that A[a] physical
2 therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment
3 in the patient record.@

4 4. California Code of Regulations section 1398.44 provides: AA licensed
5 physical therapist shall at all times be responsible for all physical therapy services provided by
6 the physical therapist assistant. The supervising physical therapist has continuing responsibility
7 to follow the progress of each patient, provide direct care to the patient and to assure that the
8 physical therapist assistant does not function autonomously. Adequate supervision shall include
9 all of the following:

10 (a) The supervising physical therapist shall be readily available in
11 person or by telecommunication to the physical therapist assistant at all times while the physical
12 therapist assistant is treating patients. The supervising physical therapist shall provide periodic
13 on site supervision and observation of the assigned patient care rendered by the physical
14 therapist assistant.

15 (b) The supervising physical therapist shall initially evaluate each
16 patient and document in the patient record, along with his or her signature, the evaluation and
17 when the patient is to be reevaluated.

18 (c) The supervising physical therapist shall formulate and document in
19 each patient's record, along with his or her signature, the treatment program goals and plan based
20 upon the evaluation and other information available to the supervising physical therapist. This
21 information shall be communicated verbally, or in writing by the supervising physical therapist
22 to the physical therapist assistant prior to initiation of treatment by the physical therapist
23 assistant. The supervising physical therapist shall determine which elements of the treatment
24 plan may be assigned to the physical therapist assistant. Assignment of these responsibilities
25 must be commensurate with the qualifications, including experience, education and training, of
26 the physical therapist assistant.

1 (d) The supervising physical therapist shall reevaluate the patient as
2 previously determined, or more often if necessary, and modify the treatment, goals and plan as
3 needed. The reevaluation shall include treatment to the patient by the supervising physical
4 therapist. The reevaluation shall be documented and signed by the supervising physical therapist
5 in the patient's record and shall reflect the patient's progress toward the treatment goals and when
6 the next reevaluation shall be performed.

7 (e) The physical therapist assistant shall document each treatment in
8 the patient record, along with his or her signature. The physical therapist assistant shall
9 document in the patient record and notify the supervising physical therapist of any change in the
10 patient's condition not consistent with planned progress or treatment goals. The change in
11 condition necessitates a reevaluation by a supervising physical therapist before further treatment
12 by the physical therapist assistant.

13 (f) Within seven (7) days of the care being provided by the physical
14 therapist assistant, the supervising physical therapist shall review, cosign and date all
15 documentation by the physical therapist assistant or conduct a weekly case conference and
16 document it in the patient record. Cosigning by the supervising physical therapist indicates that
17 the supervising physical therapist has read the documentation, and unless the supervising
18 physical therapist indicates otherwise, he or she is in agreement with the contents of the
19 documentation.

20 (g) There shall be a regularly scheduled and documented case
21 conference between the supervising physical therapist and physical therapist assistant regarding
22 the patient. The frequency of the conferences is to be determined by the supervising physical
23 therapist based on the needs of the patient, the supervisory needs of the physical therapist
24 assistant and shall be at least every thirty calendar days.


25 (h) The supervising physical therapist shall establish a discharge plan.
26 At the time of discharge, or within 7 (seven) days thereafter, a supervising physical therapist

1 shall document in the patient's record, along with his or her signature, the patient's response to
2 treatment in the form of a reevaluation or discharge summary.

3 5. California Code of Regulations section 1399 provides, in part, that:

4 AA physical therapy aide is an unlicensed person who assists a physical therapist
5 and may be utilized by a physical therapist in his or her practice by performing nonpatient
6 related tasks, or by performing patient related tasks.

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8  (b)(1) Prior to the initiation of care, the physical therapist shall evaluate
9 every patient prior to the performance of any patient related tasks by the aide. The evaluation
10 shall be documented in the patient's record.

11 (2) The physical therapist shall formulate and record in the patient's
12 record a treatment program based upon the evaluation and any other information available to the
13 physical therapist, and shall determine those patient related tasks which may be assigned to an
14 aide. The patient's record shall reflect those patient related tasks that were rendered by the aide,
15 including the signature of the aide who performed those tasks.

16 (3) The physical therapist shall assign only those patient related tasks
17 that can be safely and effectively performed by the aide. The supervising physical therapist shall
18 be responsible at all times for the conduct of the aide while he or she is on duty.

19 (4) The physical therapist shall provide continuous and immediate
20 supervision of the aide. The physical therapist shall be in the same facility as and in immediate
21 proximity to the location where the aide is performing patient related tasks, and shall be readily
22 available at all times to provide advice or instruction to the aide. When patient related tasks are
23 provided a patient by an aide the supervising physical therapist shall at some point during the
24 treatment day provide direct service to the patient as treatment for the patient's condition or to
25 further evaluate and monitor the patient's progress, and so document in the patient's record.

26 (5) The physical therapist shall perform periodic reevaluation of the

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1 patient as necessary and make adjustments in the patient's treatment program. The reevaluation
2 shall be documented in the patient's record.

3 (6) The supervising physical therapist shall countersign with their first
4 initial and last name, and date all entries in the patient's record, on the same day as patient
5 related tasks were provided by the aide. @

6 **RECOVERY OF COSTS**

7 5. Section 125.3 of the Code provides, in part, that the Division may request
8 the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case.

11 6. Section 2661.5 of the Code provides, in part, that the Board may request
12 the administrative law judge to direct any licensee found to have committed a violation or
13 violations of the licensing act to pay the Board a sum not to exceed the reasonable costs of the
14 investigation and prosecution of the case.

15 7. Respondent is guilty of gross negligence and aiding and abetting in
16 violation of Code sections 2660(h), (i), (j) and (k), and California Code of Regulations Sections
17 1398.44 and 1399, as more particularly set for hereinbelow.

18 **FIRST CAUSE FOR DISCIPLINE**

(Gross Negligence)

19 [Bus. & Prof. Code ' ' 2620.7 and 2660(h); Cal. Code of Reg. ' 1398.44]

20 8. Respondent is the owner of ASequoia Rehab and Sports medicine Clinic@
21 located at Visalia, California. During the months of December 1997 and January and February
22 1998, and at other times, respondent employed Cecily Anne Browne, a licensed physical
23 therapist assistant (hereafter APT Assistant@), and Mary Ann Ruiz, a physical therapy aide
24 (hereafter APT Aide@). During the time period noted above, a review of patient records revealed
25 the following:

26 A. A review of the patient records of C.A. (#11694), A.B. (#11666),
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1 B.B. (#11615), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals a failure of
2 respondent's involvement in the initial evaluation of these patients in violation of Code section
3 2620.7 and California Code of Regulations section 1398(44(b)).¹

4 B. A review of the patient records of C.A. (#11694), A.B. (#11666),
5 B.B. (#11615), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals a failure of
6 respondent's involvement in the formulation and documentation of treatment program goals and
7 plans for these patients in violation of Code section 2620.7 and California Code of Regulations
8 section 1398.44(c).

9 C. A review of the patient records of C.A. (#11694), A.B. (#11666),
10 B.B. (#11615), R.B. (#11645), A.B. (#11705), J.C. (#11667), F.C. (#11676), and C.C. (#11688),
11 reveals a failure of respondent's involvement in conducting reevaluations of these patients in
12 violation of Code section 2620.7 and California Code of Regulations section 1398.44(d).

13 D. A review of the patient records of G.A. (#11711), A.B. (#11666),
14 R.B. (#11645), B.B. (#11615), A.B. (#11705), A.C. (#11645), F.C. (#11676), and C.C.
15 (#11688), reveals a failure of the physical therapist assistant's signature that reflect the first date
16 of service by the PT Assistant to these patients in violation of Code section 2620.7 and
17 California Code of Regulations section 1398.44(e).

18 E. A review of the patient records of G.A. (#11711), A.C. (#11694),
19 A.B. (#11666), R.B. (#11645), B.B. (#11615), A.B. (#11705), A.C. (#11654), J.C. (#11667),
20 F.C. (#11676), and C.C. (#11688), reveals a failure of case conferences or co-signatures
21 reflecting respondent's oversight and review within seven (7) days of care by the PT Assistant in

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23 1. The full names of all patients referred to herein will be made available to respondent
24 upon a timely request for discovery.
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violation of Code section 2620.7 and California Code of Regulations section 1398.44(f).

F. A review of the patient records of B.B. (#11615), A.B. (#11705), J.C. (#11667), and C.C. (#11688), reveals a failure of respondent's involvement in regular case conferences between respondent and the PT Assistant at least every thirty (30) days in violation of Code section 2620.7 and California Code of Regulations section 1398.44(g).

G. A review of the patient records of C.A. (#11694), A.B. (#11666), R.B. (#11645), B.B. (#11615), A.B. (#11705), J.C. (#11667), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals a failure of respondent's involvement in establishing and documenting a discharge plan and summary in violation of Code section 2620.7 and California Code of Regulations section 1398.44(h).

H. A review of the patient records of G.A. (#11711), C.A. (#11694), A.B. (#11666), R.B. (#11645), B.B. (#11615), A.B. (#11705), A.C. (#11654), J.C. (#11667), F.C. (#11676), and C.C. (#11688), reveals a failure of respondent's oversight, direction and delegation of patient services to be conducted by the PT Assistant or specific documentation indicating specific services rendered by the PT Assistant that exceeds the scope of utilization in violation of Code section 2620.7 and California Code of Regulations section 1398.44.

I. A review of the patient records of A.B. (#11666), R.B. (#11645), J.C. (#11667), A.C. (#11667), A.C. (#11654), F.C. (#11676) and C.C. (#11688), reveals a failure of respondent's involvement with the patients' initial evaluations prior to the PT Aide rendering patient treatment in violation of Code section 2620.7 and California Code of Regulations section 1399(b)(1).

J. A review of the patient records of A.B. (#11666), R.B. (#11645), J.C. (#11667), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals a failure of respondent's involvement in the delegation and assignment of patient related tasks to the PT Aide in violation of Code section 2620.7 and California Code of Regulations section 1399(b)(2).

K. A review of the patient records of A.B. (#11666), R.B. (#11645),

1 J.C. (#11667), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals a failure of
2 respondent's involvement with patient care on the same day that care was rendered by the PT
3 Aide in violation of Code section 2620.7 and California Code of Regulations section 1399(b)(4).

4 L. A review of the patient records of A.B. (#11666), R.B. (#11645),
5 J.C. (#11667), A.C. (#11654), F.C. (#11676), and C.C. (#11688), reveals no counter signatures
6 by respondent for days the PT Aide rendered patient related tasks and/or treatment in violation of
7 Code section 2620.7 and California Code of Regulations section 1399(b)(6).

8 9. Respondent's conduct as set forth in paragraph 8, above, constitutes a
9 violation of Code sections 2620.7 and 2660(h) and California Code of Regulations sections
10 1398.44(b), (c), (d), (e), (f), and (h).

11 **SECOND CAUSE FOR DISCIPLINE**

(Aiding and abetting unlawful practice)

12 [Bus. & Prof. Code ' ' 2660 (j) and (k); Cal. Code of Reg. ' 1399]

13 10. Complainant realleges paragraph 8, above, and incorporates it herein by
14 reference as if fully set forth at this point.

15 11. Respondent's conduct as set forth in paragraph 8, above, constitutes a
16 violation of Code sections 2660(j) and (k) and California Code of Regulations sections
17 1399(b)(1), (2), (4), and (6).

18 **THIRD CAUSE FOR DISCIPLINE**

(Repeated negligent acts)

19 [Bus. & Prof. Code ' 2234(c) [Medical Practice Act] and 2660(i)]

20 12. Complainant realleges paragraph 8, above, and incorporates it herein by
21 reference as if fully set forth at this point.

22 13. Respondent's conduct as set forth in paragraph 8, above, constitutes a
23 violation of Code sections 2234(c) and 2660(i) as repeated negligent acts.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
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27

1 alleged, and that following the hearing, the Physical Therapy Board issue a decision:

2 1. Revoking or suspending License Number PT 5959, issued to Donald Lee
3 Zimmerman, P.T.

4 2. Ordering Donald Lee Zimmerman, PT, to pay the Physical Therapy
5 Board the reasonable costs of the investigation and enforcement of this case, pursuant to
6 Business and Professions Code section 2661.5.

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: May 18, 2001.

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Original signed by Steven K. Hartzell
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant